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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|--|-------------|----------------------|---------------------------------|-----------------------------|
| 10/563,392   | 06/20/2007  | Klaus Worgull        | 3564                            | 1516                        |
| 278  | 7590        | 05/20/2011           |                                 |                             |
| MICHAEL J. STRIKER<br>103 EAST NECK ROAD<br>HUNTINGTON, NY 11743 |             |                      | EXAMINER<br>HALL, COREY JOHN    |                             |
|  |             |                      | ART UNIT<br>3743                | PAPER NUMBER                |
|  |             |                      | NOTIFICATION DATE<br>05/20/2011 | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/563,392

**Applicant(s)**

WORGULL ET AL.

**Examiner**

Corey J. Hall

**Art Unit**

3743

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 3-6 and 9-14.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☒ Other: See Continuation Sheet.

/Kenneth B Rinehart/  
Supervisory Patent Examiner, Art Unit 3743

/Corey J Hall/  
Examiner, Art Unit 3743

Continuation of 11, does NOT place the application in condition for allowance because: The applicant's arguments filed 5/9/2011 have been fully considered but they are not persuasive. Claims in a pending application should be given their broadest reasonable interpretation. Therefore, in response to arguments IA, the examiner does not believe that it is unreasonable to read the limitation of said barrel portion is embodied as a second handle grip as reading on the barrel portion of Springer because the barrel portion is inherently capable of being used as a second handle grip. This is particularly reasonable in view of Thaler '331 at col. 1, lines 23-32 (see also fig. 4) and Kaeriyama at page 3, line 9-page 4, line 14 (see also fig. 2) which explicitly disclose that it is known that users sometimes prefer to hold a hair dryer by the barrel. The assertion that the barrel portion of the Springer hair dryer would be too hot is strongly contradicted by Thaler '331 and Kaeriyama which clearly indicate that user's will commonly hold generic hair dryers by the barrel. Additionally, there is no indication that Springer would not function if held by the barrel. Thaler '331 and Kaeriyama are relevant to whether the barrel portion of Springer could inherently be used as a second handle grip because the references are extrinsic evidence that make clear that the missing descriptive matter is necessarily present in the hair dryer described in Springer and that it would be so recognized by persons of ordinary skill. Accordingly, the burden shifts to the Applicant to show an unobvious difference. Additionally, Springer has rounded edges as shown in figure 4. The Examiner reaffirms that Springer would inherently insulate for the reasons provided. Additionally, Thaler '331 and Kaeriyama provide extrinsic evidence that user's can hold the barrel portions of hair dryers while being protected from the heat by the inherent insulating effect of the barrel portion. Kaeriyama explicitly discloses that its barrel wall provides an insulation action at page 8, lines 8-24. The use of the term "little patentable weight" with regard to the term "insulated" was not found in the Office action regarding Springer, though as stated in MPEP 2114, it is the case that "claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function." In re Schreiber, 128 F.3d 1473, 1477-78. Therefore, "to prevent said second handle grip (9) from getting hot during use" does little to distinguish from the prior art which inherently provides insulation. In response to arguments IB, as provided above it is well known that users commonly hold hair dryers by the barrel while using hair dryers. Again, the claims must be distinguished from the prior art in terms of structure rather than function and accordingly "configured to be", while given patentable weight, does little to structurally distinguish the claimed apparatus from the prior art. Where users commonly hold hair dryers by the barrel portion it is reasonable to assert that they could also use the switch while holding the barrel portion. In response to arguments under 35 U.S.C. 103, the Examiner notes that in section 2 of the response to arguments mailed 3/30/2011 the Examiner acknowledged that "While figure 5 of Thaler '331 does show two electrically wired cold air combination switches 127, 120, figure 1 shows a single electrically wired cold air combination switch 20." The rejection starting in section 15 uses the embodiment of figure 1, not figure 5, in response to the amendment requiring a single cold air combination switch. In response to argument IIA, Springer does disclose the limitations as explained above. In response to argument IIB, Gallone does disclose a switch that constitutes a two-legged toggle switch and uses the legs to transmit the force required to switch the toggle switch. In response to argument IIC, hair dryers are commonly used near sinks and by people who have wet hair. Therefore, hair dryers are typically used near water and a switch that provides protection against water splashes from a sink, a user's hair, or a user's wet hands to prevent electrical shock to the user provides reasonable motivation achievable by simply substituting one toggle switch for another toggle switch. In response to argument IIIA, the arguments are moot because they are directed to the second push button 127 shown in figure 5 when the embodiment of figure 5 was not used in the Office action mailed 3/30/2011 as can be seen in section 15 of the Office action. In response to argument IIIB, Thaler '331 shows a housing that encloses the blower means having an air inlet (13) and to which the handle (11) and the barrel (10) are attached which is similar to Applicant's figure 9 showing a housing (6) that encloses the blower means (2) having an air inlet (34) and to which the handle (8) and the barrel (5) are attached. In response to argument IIIC, the modification of having the switch (20) located only on the housing involves merely shifting the position of the switch up onto the housing only and would not modify the operation of the device. This is very similar to the shifting of a switch in In re Japikse, which was cited in the Office action. Additionally, Springer is extrinsic evidence showing that it is known to place switches only on the housing. In response to argument IV, there are no substantive arguments that have not been previously addressed. In response to argument VA, the arguments have been previously addressed. In response to argument VB, the arguments against Gallone are addressed above. In response to argument VC, the response to the arguments regarding Gallone are substantially the same as above. In response to argument VIA, the arguments have been previously addressed. In response to argument VIB, the apparatus of Berryman is very similar to that of Thaler '331 and the benefit of better ensuring that the user is not burned by the barrel is reasonable motivation, particularly in light of Kaeriyama which indicates that a hair dryer can benefit from having greater insulation at the barrel. In response to argument VIIA, the arguments were addressed in IIIB and IIIC above. In response to argument VIID, Berryman taught a way to insulate the barrel of a heat gun which would better ensure that a user is not burned and the similar apparatus of Thaler '331 would benefit from having its barrel insulated in substantially the same way.

Continuation of 13. Other: the amendment of claim 13 deleting "sufficiently" has been entered. The claims remain rejected as provided in the Office action except for the term "sufficiently". Additionally, the rejection under 35 U.S.C. 112, second paragraph is withdrawn.